

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 717 / 04 (S/S)

Chandan

vs

State through Secretary Forest Dehradun and others

Approved for reporting

~~Not approved for reporting~~

Date of decision 30.03.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 717 (S/S) of 2004

Chandan S/o Sri Lashkari,
Forest Compound Oak-Park
Mallital, Nainital

....Petitioner

Vs

(1) State of Uttaranchal through
The Principle Secretary Forest
Department, Government of Uttaranchal
Dehradun.

(2) The Principle Chief Conservator,
of Forest Uttaranchal, Nainital and its
Camp Officer at 85, Rajpur Road, Dehradun.

(3) Conservator of Forest, Working
Plan, Canten Lodge, Mallital, Nainital.

....Respondents

Counsel for the petitioner Sri. P.C. Jhingan

Dated:- 30.03.2006.

Hon'ble Rajesh Tandon J.

Heard Sri P.C. Jhingan, learned Counsel for the petitioner and Standing counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus commanding the respondents to regularize the service of the petitioner on Class-IV (Group-D) post in the Forest Department from the date of joining of other daily wage employees of the Forest Department. Petitioner has further prayed for the issue of a writ order or direction in the nature of mandamus commanding the respondents to make payment of arrears of the salary for which he was entitled on the regular post.

Brief facts of the case are that earlier the petitioner has filed the writ petition being writ petition No.659 of 2003 Chandan Vs. State of Uttaranchal and others which was decided on 9-12-2003. The respondent

No.3 has admitted that the petitioner was engaged on daily wage from the year 1975 to 1995 and from September 1999 onwards he has been getting his daily wages through treasury, which clearly goes to show that he has been working on daily wage since 1975 upto 1999 throughout.

The petitioner has submitted that he is entitled for the regularization in pursuance of the Rules framed by the Uttaranchal Forest Department Regularization (on Group "D" posts) of Daily Wages Appointment Rules, 2003.

Counsel for the petitioner has also submitted that he has completed approximate 24 years of service but still he has not been regularized.

The petitioner has also referred earlier writ petition no. 4147/01(S/S) decided by the Uttaranchal High Court with the Following observations:-

"Chandan S/o Sri Lashkari"

" This writ petition has been filed by the petitioners seeking a writ of mandamus to command the respondents to consider the case of the petitioners for regularization and to pay them regular salary as is being paid to the regular employees of the Department. The similar grievance raised by the other daily-wager employees of the Forest Department was considered by the High Court, Allahabad, in which the High Court, Allahabad directed the Department to frame a scheme for regularization of daily wages, against which the State of Uttar Pradesh approached the Hon'ble Apex Court. The Hon'ble Apex Court passed the following order;-

" In the course of hearing of these appeals filled by the State of U.P. as well as the State of Uttaranchal, the main grievance appears to be the directions of the High Court directing framing of a scheme for regularization of all daily wagers/muster rolls employees irrespective of the fact whether they are in government or under any scheme. It appears to us that the scheme in question need not be frame so far as those who are under any scheme, as the continuity of the scheme is dependent upon several imponderables. But is cannot be doubted that a

scheme for regularization of those daily wagers who are in the Forest Department has the fact that they have been serving for a period for 3 to 20 years. We modify the impugned directions of the High Court and substitute the same by directing that the scheme in question may be framed giving details as to how the services of those daily wagers/muster rolls under the Forest Department who have rendered 10 years or more service for being regularized. The scheme in question may be framed within three months from today and the matter may be called after three months to consider the feasibility and /or viability of the scheme to be formulated. The State is directed to file any further affidavit indicating as to how the persons are being regularized in accordance with the regularization rules.

In view of the aforesaid direction of the Hon'ble Supreme Court , the respondents are directed that if the scheme has been framed and if the petitioners are eligible, their case of regularization and to pay them regular salary shall be considered.

With the above observation, the writ petition is disposed of finally.

Sd/- P.C. Verma J.

10-8-2001

The petitioner has stated that in pursuance of the judgment of the Apex Court the State of Uttarakhand has formed the Rules known as "Uttarakhand Forest Department Regularization (on Group 'D' Posts) of Daily Wages Appointment Rules, 2003". The Preamble of the Act says that the rules may be called Uttarakhand Forest Department Regularization(on Group 'D' Posts) of Daily Wages Appointment Rules, 2003.

State has filed a counter affidavit in which he has stated that in compliance of the above judgment dated 9-12-2003 passed by this Hon'ble court, the case of the petitioner was considered by the respondent No.3 in terms of the said regularization rule as well as in the light of the observation made by the Hon'ble Apex Court in Civil Appeal NO. 3634 of 1998,(State of U.P. and others Vs. Putti Lal and others) and as per the office record, the

petitioner was found willingly and unauthorisly absent from duty from time to time for the period given below:-

S.No.	Year	Worked during the months	Found unauthorisly absent for the period
1.	1975	May to December 1975	4 Months
2.	1976	Feb. To May, Nov. and Dec.1976	6 Months
3.	1077	Jan, Feb. and Nov. 1977	9 Months
4.	1978	December, 1978	11 Months
5.	1979	Jan to March 79	9 Months.
6.	1980	December, 1980	11 Months
7.	1981	Jan to April, 1981	8 Months
8.	1982	Jan, april, Sept and Nov 1982	8 Months
9.	1983	Jan, To May and Dec.83	6 Months
10.	1984	Feb to April 1984	9 Months
11.	1985 To 1990	Continuously Absent	6 Years
12.	1991	December 1991	11 Months

The criteria has been mentioned under Rule 4 which reads as under:

“4. Regulation of daily wages appointments on Group “D” posts :

(i) Any person who:-

(a) was directly appointed on daily wages basis on a Group “D” post in the Forest Department under Government service before June 29, 1991 and in continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be

considered for regular appointment in permanent or temporary vacancy, as may be available in the Forest Department in Group “D” post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act (Uttaranchal Adaptation and Modification) order 2001, and the Uttar Pradesh Public Services (reservation for Physically Handicapped, Dependents of freedom fighters and Ex-Servicemen Act, 1993 as amended from time to time and the orders of the Government in force at the time of regularization under these rules, and

Note :- In this connection the provision of reservation shall be fixed vide Uttaranchal Govt. Karmik Department Dehradun’s letter no. 1144/Karmik-2-2001/53(1)/2001, dated 18.7.2001 and 1415/Karmik-2/2001, dated 30.8.2001 for the state of Uttaranchal.

(3) For the purpose of sub-rule (1) the Principal Chief Conservator of Forests (PCCF) shall constitute a State Level Selection Committee.

(4) The appointing authority shall, having regard, to the provisions of sub-rule (1), forward complete details of the vacancies of Group “D” Posts and list of the persons working on daily wages, alongwith complete relevant information/records, with regard to Division/Circle/Office under his control, to the Chief

Conservator of Forests (Administration) who shall prepare an eligibility list of the candidates, arranged in order to seniority as determined from the date of order of appointment on daily wage basis and if two or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee alongwith such relevant records pertaining to the candidates, as may be considered necessary, to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub- rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order to seniority, and forward the same to the Chief Conservator of Forests (Administration). The Chief Conservator of Forests (Administration), keeping in view the position/number of the vacancies of Group “D” posts in different Divisions / Circles / Offices and subject to the sub-rule (2) of Rule 4, forward the names of selected candidates, in the order in which their names stand in the list to the appointing authority concerned.

The aforesaid Rules were framed by the Uttarakhand Government on the basis of the Judgment of the Apex Court in the State Vs. Putti Lal where it was brought to the notice of the Apex Court regarding the scheme for regularization for daily wagers with regard to the state of Uttarakhand. The observations of the apex Court are quoted below:-

“ So far as the State of Uttarakhand is concerned, a scheme for regularization of daily workers has been produced before us which prima facie does not appear to be objectionable excepting

the provision regarding qualification for regularization. Be it stated that the qualification essential for being regularized would be the qualification as was relevant on the date a particular employee was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicate the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wages workers. Needless to mention that the Appropriate Authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of state of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularized and he is given regular scale of pay.”

A writ of mandamus to issued directing the respondents to consider the regularization in terms of the Uttaranchal Forest Department Regularization (On Group “D” Posts) of daily Wages Appointment Rules, 2003 as well as in the light of the observations made by the Apex Court in the State Vs. Putti Lal as well in accordance with the observation in writ petition no. 4147/2001.

Subject to the aforesaid, writ petition is allowed. There will be no order as to costs.

(Rajesh Tandon,J)

Dated:- 30.03.2006.
M.K.